Supreme Court, U.S.
FILED

10-302 AUG 25 2010

OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES

JOYCE KUBICKI, et al.
Plaintiff – Appellant – Petitioner,

v.

APPROXIMATELY 3.38 ACRES OF LAND, et al.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORIGINAL PETITION FOR A WRIT OF CERTIORARI WITH APPENDIX A

JOYCE KUBICKI
P.O. BOX 587
BIRMINGHAM, MICHIGAN 48012

Questions Presented

Subject Matter Jurisdiction

1. Does the trial court have subject matter jurisdiction?

Recusal/Conflict

2. Should COHN participate when this case is reinstated?

Parties

Appellant(s)

Joyce Kubicki, and
JOYCE KUBICKI

Appellees

UNITED STATES OF AMERICA ("USOA")

UNITED STATES ("U.S.")

STATE OF MICHIGAN

COUNTY OF OAKLAND, MICHIGAN

OAKLAND COMMUNITY COLLEGE

THE ROAD COMMISSION FOR OAKLAND COUNTY

CITY OF BLOOMFIELD HILLS, MICHIGAN

BLOOMFIELD HILLS SCHOOLS BOARD OF EDUCATION

The property
Approximately 3.38 Acres of Land, and
APPROXIMATELY 3.38 ACRES OF LAND,

LOCATED NEAR COUNTY OF OAKLAND, STATE OF MICHIGAN

Petition for a Writ of Certiorari

Kubicki petitions for a writ of certiorari to the federal appellate court as follows:

Citations to decisions below

None.

Jurisdiction

(i) Date of Affirmance of Dismissal
8 June 2010 [+90: 6 September 2010].
No. 09-2378

(ii) Extension N/A

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. §§ 1254(1), 2101(c).

(v) Statutory challenge, Rule 29.4(b)
None.

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Statement of the Case

Trial Court's Jurisdiction

28 U.S.C. § 1333(1). *See also* §§ 1331, 1343, 1346, 1367.

Knee-jerk denial of access

The *Kelo* case is quite motivational. Regarding this 3.38 acres, Kubicki intends to assert a claim in fee simple superior to all the world. Toward that

end, she transferred the land beyond this state, having given 90 days' Notice. Knowing that several parties intended to assert claims sounding in trust alleging this one item of property as part of the alleged trust *res* for each separate trust, she initiated this *in rem* claim against the property. She never even got to the part of Service by Publication because COHN dismissed the suit out in about three days. He didn't just dismiss; he also returned the filing fee.

As further proof of jurisdiction, this Court may take Judicial Notice of No. 10-10722, Kubicki v. USOA, et al. (E.D. Mich.) (Remand denied; dismissal granted; recently appealed). That 90-day letter came completely out of the blue within a very close proximity to Kubicki's serving this *in rem* claim. [1]

Moreover, the Oakland County Treasurer's office purports to have assumed "title" to this land, even though the description never defined a closed area. *See also* No. 09-100572-CZ (Oakland County Cir. Court); No. 296820 (Mich. App. Dist. II).

There most assuredly is a continuing case or controversy involving this land and at least some of these parties. We'll know if there are additional parties interested in this land right after Service by Publication is completed. If any of those clandestine trusts are viable, which Kubicki doubts, given the trust *res* kiting involved, let those people prove their claims so as to settle all such matters. Moreover, given the lack of competent property description, Oakland and/or STATE owes Kubicki Refunds for several years.

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[1] USOA/U.S. were served more per thoroughness than per an expectation of any actual interest. Thus, § 1346 was uncertain at the time of filing. There is no uncertainty at this stage.

Argument

Subject Matter Jurisdiction

1. Does the trial court have subject matter jurisdiction?

This is an *in rem* matter involving United States as a party and involving (criminal) violation of rights to property under color and pendant/supplemental state law claims. 28 U.S.C. § 1333(1); § 1331, § 1343; § 1346; § 1367. No party is added solely to assert (fabricate) jurisdiction. All controversy is quite real.

Kubicki expects neither COHN nor the entire 6th Cir. has ever been exposed to this side of the law ("property tax" sounds in trust; the *in rem* claim). For this case, as a matter of law, § 1341 will never even activate, much less even affect Kubicki's equitable claims, much less bar her entire suit! *Hibbs v. Winn*, 542 U.S. 88 (2004) (*STATE's* § 1341 condition precedent: ***prove*** "taxpayer"). COHN irrebutably ***presumed/compelled*** "taxpayer," shifted the burden, ***and*** denied access. [2] FORESTER affirmed.

Recusal/Conflict

2. Should COHN participate when this case is reinstated?

COHN meant well when he returned the filing fee. But, he also engaged in denial of access under

[2] Regarding the ruling on appeal, Kubicki has no idea where the concept of "stock holder" comes from. She never even held the concept in her mind, much less "mentioned" it. So, if that opinion is attempting to teach a new concept, the origin of the idea has so far not been found.

color of law. There is no better way for him to learn the law than to participate in this case, but knee-jerk criminal violation of the litigants before him is intolerable. [3] Thus, let him learn vicariously this time around. 28 U.S.C. § 455(a); *Liljeberg v. Health Svcs. Acq. Corp.*, 486 U.S. 847 (1988).

Remedies and Relief Requested

Given the foregoing, Kubicki requests remedies and relief as follows:

1. Grant this petition and take jurisdiction of this matter;
2. Vacate the "order" on appeal;
3. Reinstate this case in the trial court;
4. Add the instruction that COHN shall not participate;
5. Set this on the non-argument calendar;
6. Award costs; and
7. Award any and all other relief at law, in equity, or sui generis to which she may show herself justly entitled.

Respectfully submitted,

/s/ Joyce Kubikci
Joyce Kubicki

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[3] After having resubmitted the returned filing fee and after that return's having been rejected, Kubicki is satisfied to keep the fee in settlement of the damages.

Appendix A
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Reference to the Record is sufficient. A-10

Appendix A

Rule 14.1(i)(i)—Appellate Opinion/Order

2010 Jun 8—Opinion/Order, 6th Cir.

FILED
Jun 08, 2010
LEONARD GREEN, Clerk

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 09-2378

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOYCE KUBICKI,

Plaintiff-Appellant,

v.

APPROXIMATELY 3.38 ACRES OF LAND LOCATED NEAR COUNTY OF OAKLAND, STATE OF MICHIGAN; OAKLAND COMMUNITY COLLEGE,

Defendants-Appellees.

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)
)
) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE EASTERN DISTRICT OF
) MICHIGAN
)
)
)
)

O R D E R

Before: MERRITT and COLE, Circuit Judges; FORESTER, District Judge. *

Joyce Kubicki, a pro se Michigan resident, appeals a district court judgment dismissing her civil complaint pursuant to 28 U.S.C. § 1331, 1333, 1343, and 1367, and 42 U.S.C. § 1983. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary and declaratory relief, Kubicki filed this suit concerning approximately 3.38 acres of land in Oakland County, Michigan. In her complaint, Kubicki objected to several of the district court's local

* The Honorable Karl S. Forester, United States District Judge for the Eastern District of Kentucky, sitting by designation.

rules; mentioned the assessment of taxes; stated that she is a stock owner in the State of Michigan, which is allegedly a commercial enterprise doing business in the state; and [⊥ 2] asserted that the state is attempting to steal her property by using property taxes and that an error in the property description prevents the state from taxing her property.

The district court noted that although Kubicki's complaint was "virtually unintelligible," it was able to understand from the attachments to the complaint that Kubicki was challenging the assessment of property taxes to land that she owns, based on a mistake in the legal description of the property. The court noted that a notice of her tax delinquency had been filed on the property. The district court stated that federal courts were prohibited under 28 U.S.C. § 1341 from preventing the collection of state taxes where a state remedy exists. Therefore, the district court dismissed the complaint for lack of subject matter jurisdiction pursuant to Fed. R, Civ. P. 12(b)(1).

In her timely appeal, Kubicki argues that the district court issued a "knee-jerk sua sponte 'order.'" She asserts that the state is involved in a "funny money" scam where property is being stolen from people through the property-tax system. Kubicki argues that a state can tax an individual only if the state has an enforceable agreement with that individual. Without an agreement, she contends, the state has no basis to tax someone. Kubicki argues that tax laws are based on the law of trusts and that the state is violating trust law by operating scams to obtain "rent" under the label of "property taxes."

Kubicki states that Michigan knows its property taxes are illegal. Finally, Kubicki argues that the district court judge was biased, that he should have recused himself from the case, and that on remand, the case should be assigned to a different judge.

We review the district court's order de novo. *DLX Inc. v. Kentucky*, 381 F.3d 511, 516 (6th Cir. 2004).

Under the Tax Injunction Act, "district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341. The statute was "to limit drastically federal district court jurisdiction" over "the collection of taxes." *California v. Grace Brethren Church*, 457 U.S. 393, 408-09 (1982) (quoting *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 522 (1981)). The law was also designed "to promote comity and to afford states the broadest independence, consistent with the federal constitution, in the administration of their ... revenue [⊥ 3] raising." *Hedgepeth v. Tennessee*, 215 F.3d 608, 611 (6th Cir. 2000) (quoting *Wright v. McClain*, 835 F.2d 143, 144 (6th Cir. 1987)). The Act requires states only to satisfy "certain minimal procedural criteria" to show that they provide a "plain, speedy and efficient remedy" for allegedly invalid taxes. *Rosewell*, 450 U.S. at 512 (emphasis in original). A state satisfies this burden when it provides "a full hearing at which a taxpayer may present and secure a judicial determination at which he or she may raise any and all constitutional objections to the tax." *Hedgepeth*, 215 F.3d at 615. The Act applies to both injunctive and declaratory actions. *Grace Brethren*

Church, 457 U.S. at 408.

Michigan provides "a 'plain, speedy and efficient remedy'" for tax disputes concerning the nonpayment of property taxes. *Helmsley v. City of Detroit*, 320 F.2d 476, 481 (6th Cir. 1963); *Conely v. Twp. of York*, 76 F. App'x 49, 51 (6th Cir. 2003); *Howard v. City of Detroit*, 73 F. App'x 90, 95-97 (6th Cir. 2003) (detailed discussion of Michigan's property tax laws). Therefore, the district court was without jurisdiction to entertain Kubicki's complaint. *See Rosewell*, 450 U.S. at 522; *Conely*, 76 F. App'x at 51.

Kubicki contends that the district court judge was biased, that he should have recused himself from the case, and that on remand, the case should be assigned to a different judge. A judge must recuse himself only "if a reasonable, objective person, knowing all of the circumstances, would have questioned the judge's impartiality." *Hughes v. United States*, 899 F.2d 1495, 1501 (6th Cir. 1990). There is no evidence in the record indicating that the district court judge was biased and the facts establish that the district court lacked jurisdiction to entertain Kubicki's complaint.

Finally, it is noted that Oakland Community College has filed a brief with the court. Despite not being named as a defendant, or identified in the complaint, the college was served a summons after the district court dismissed the complaint, but has been made an appellee before this court. Kubicki does not name the college in her brief on appeal. Therefore, any argument Kubicki could have raised against the college is considered abandoned and not reviewable on appeal. *See O'Hara v Brigano*, 499

F.3d 492, 498 (6th Cir. 2007). [1 4]

Accordingly, we affirm the district court's order. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Clerk

Rule 14.1(i)(ii)—Additional Orders

2009 Oct 15 – E.D. Mich. (COHN)

FILED
OCT 15 2009
CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN MICHIGAN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

[left side]
JOYCE KUBICKI,

Plaintiff,

vs.

APPROXIMATELY 3.38 ACRES
OF LAND LOCATED NEAR
COUNTY OF OAKLAND, STATE OF
MICHIGAN,

Defendant.

_____/

[right side]

Case No. 09-14044

HON. AVERN COHN

ORDER OF DISMISSAL

Joyce Kubicki, proceeding pro se, has filed a complaint against "Approximately 3.38 Acres of Land Located near County of Oakland, State of Michigan." Because plaintiff paid the requisite filing fee, the complaint is not subject to screening for sua sponte dismissal under 28 U.S.C. § 1915(e)(2). Benson v. O'Brian, 179 F.3d 1014 (6th Cir. 1999). A court generally may not sua sponte dismiss a complaint where the filing fee has been paid unless the court gives the plaintiff notice and the opportunity to amend the complaint. Tingler v. Marshall, 716 F.2d 1109, 1111-12 (6th Cir. 1983). However, "a district court may, at any time, sua sponte dismiss a complaint for lack of subject matter jurisdiction pursuant to Rule 12 (b)(1) of the Federal Rules of Civil Procedure when the allegations of a complaint

are totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion." Apple v. Glenn, et al. 183 F.3d 477, 479 (6th Cir. 1999). When reviewing pro se complaints, the court must employ standards less stringent than if the complaint had been drafted by [⊥ 2] counsel. Haines v Kerner, 404 U.S. 519 (1972).

II.

The Court has read the complaint. It is virtually unintelligible. From what can be gleaned from the complaint and attached exhibits, plaintiff owns real property in Oakland County which apparently contains a misclosure in the legal description. [1] As a result, plaintiff maintains that she does not have to pay property taxes on the parcel. According to exhibits attached to the complaint, a Notice of Property Tax Delinquency has been filed. Plaintiff says she has challenged the assessment. She seeks declaratory relief and money damages.

Although it appears that plaintiff attempts to invoke federal question jurisdiction, [2] the Court cannot discern a viable federal claim. This is particularly so given that federal district courts are

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[1] The description does not close by 14.818 feet. The error occurred in the chain of title when the north line of the property was misstated.

[2] Plaintiff cites 28 U.S.C. § 1333(1) (maritime jurisdiction), 28 U.S.C. § 1331 (federal question), § 1343 (civil rights and election franchise), and § 1367 (supplemental jurisdiction). She also says she "asserts all her unalienable rights, privileges and immunities at Natural Law, Common Law, and Maritime Law, and all her commercial rights relevant to "this state," a/k/a 'United States."

prohibited from enjoining, suspending, or restraining the assessment of any state tax where a state remedy exists. See 28 U.S.C. § 1341. Plaintiff's complaint, although she appears to contend otherwise, falls within this prohibition on federal jurisdiction. | ⊥ 3 |

III.

Accordingly, the complaint is DISMISSED for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1).

The Clerk is directed to return the filing fee to plaintiff.

SO ORDERED.

s/ Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: October 15, 2009

I hereby certify that a copy of the foregoing document was mailed to Joyce Kubicki, P.O. Box 587, Birmingham, MI 48012 on this date, October 15, 2009, by electronic and/or ordinary mail.

s/ Julie Owens
Case Manager, (313) 234-5160

Rule 14.1(i)(iii)—Rehearing

No rehearing sought or granted.

Rule 14.1(i)(iv)—Judgment of different date

None.

Rule 14.1(i)(v)—Statutes and Rules

None for this petition.

Rule 14.1(i)(vi)—Additional Essential Materials

Reference to the Record is sufficient.